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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,965	03/15/2004	Roland Benitsch	ZTP01P14036	2550

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LERNER AND GREENBERG, PA
P O BOX 2480
HOLLYWOOD, FL 33022-2480

EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,965

Applicant(s)

BENITSCH ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “bottles” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

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skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6 & 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harbison [U.S. Patent No. 2,294,749] in view of Anderson [U.S. Patent No. 5,167,903]. Harbison (figures 1-4) teaches of a refrigerator (fig. 1) comprising: a housing (10) having a cooled interior space; at least one drawer (18) [in as much as applicant depicts the claimed limitation – sliding shelf] disposed in the interior space and capable of storing bottles; the at least one drawer having a frame (note fig. 1) with two opposite sides; the at least one drawer having a plurality of rods (26) secured to and spaced apart from one another between the two opposite sides of the frame at pre-selected distances from one another. The rods having a cross section with an upwardly directed rounding (see figures) i.e., a circular cross section. The at least one drawer capable of storing bottles in either a horizontal or a reclining position depending upon placement of a bottle and the shape of a bottle as readily apparent to the examiner. Harbison teaches applicant's inventive claimed structure as disclosed above, but does not show the rods as being "releasably mounted" to the frame. Anderson (figures 1-19) is cited as an evidence reference for the teaching of removable support bars (20) located on a tray, the rods being mounted to side elements via a plug-in connection (16) or a projection (note fig. 3 for example) for latching one end of the rods. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the drawer of Harbison so as to employ "removable" rods as taught by Anderson because this arrangement would provide Harbison with the opportunity to rearrange the bar configuration on the drawer so as to suit the particular needs of the user or enhance the supporting capacity for irregularly shaped items carried by the drawer. As to claim 3, the position

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is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the diameter of the rods depending upon the intended use or preference desired, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art and therefore will not distinguish the invention from the prior art in terms of patentability.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harbison and Anderson and further in view of Kay [U.S. Patent No. 5,322,173]. The prior art teaches applicant's inventive claimed structure as disclosed above, but does not show the rods as being formed of wood. Kay (figures 1-7) is cited as an evidence reference to show that it was known to utilize a wooden rod in a shelf, wherein a plurality of the rods are used to support an item. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the material of the rods utilized by the prior art so as to incorporate the wood material as taught by Kay since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of personal preference in view of the fact that the intended needs of the user or intended use of the structure may vary over time.

4. Claims 1-4, 6 & 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tattershall [U.S. Patent No. 4,138,175] in view of Anderson. Tattershall (figures 1-10) teaches of a refrigerator (fig. 10 e.g.,) comprising: a housing (94) having a cooled interior space; at least one drawer (60) [in as much as applicant depicts the claimed limitation - sliding shelf] disposed in the interior space and capable of storing bottles; the at least one drawer having a frame (note fig. 2) with two opposite sides; the at least

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one drawer having a plurality of rods (63) secured to and spaced apart from one another between the two opposite sides of the frame at pre-selected distances from one another. The rods having a cross section with an upwardly directed rounding (see figures) i.e., a circular cross section. The at least one drawer capable of storing bottles in either a horizontal or a reclining position depending upon placement of a bottle and the shape of a bottle as readily apparent to the examiner. Tattershall teaches applicant's inventive claimed structure as disclosed above, but does not show the rods as being "releasably mounted" to the frame. Anderson (figures 1-19) is cited as an evidence reference for the teaching of removable support bars (20) located on a tray, the rods being mounted to side elements via a plug-in connection (16) or a projection (note fig. 3 for example) for latching one end of the rods. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the drawer or Tattershall so as to employ "removable" rods as taught by Anderson because this arrangement would provide Tattershall with the opportunity to rearrange the bar configuration on the drawer so as to suit the particular needs of the user or enhance the supporting capacity for irregularly shaped items carried by the drawer. As to claim 3, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the diameter of the rods depending upon the intended use or preference desired, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art and therefore will not distinguish the invention from the prior art in terms of patentability.

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tattershall and Anderson and further in view of Kay [U.S. Patent No. 5,322,173]. The prior art teaches applicant's inventive claimed structure as disclosed above, but does not show the rods as being formed of wood. Kay (figures 1-7) is cited as an evidence reference to show that it was known to utilize a wooden rod in a shelf, wherein a plurality of the rods are used to support an item. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the material of the rods utilized by the prior art so as to incorporate the wood material as taught by Kay since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of personal preference in view of the fact that the intended needs of the user or intended use of the structure may vary over time.

Allowable Subject Matter

6. Claims 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments, see reconsideration request, filed December 22, 2004, with respect to the rejection of the claims under 35 U.S.C. 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection are made in view of above cited references.

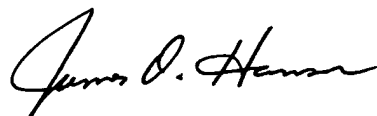
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866; 703-305-7414[old]. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen
Primary Examiner
Art Unit 3637

JOH
March 14, 2005